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SUBJECT: NIGERIAN FORMER CHIEF JUSTICE EXPECTS APPROVAL OF
SOME ELECTORAL REFORMS EARLY NEXT YEAR

Classified By: Ambassador Robin Renee Sanders
for reasons in sections 1.4 (b) and (d).

SUMMARY

¶1. (C) Ambassador met Nigeria's former Chief Justice and Electoral Reform Commission (ERC) Chairperson Mohammed Lawal Uwais December 18 to discuss Nigeria's current political situation, including President Yar'Adua's failing health and preparations for national elections in 2011. Uwais affirmed his belief that Vice President Jonathan will become President following a Constitutional succession should President Yar'Adua resign or die in office; that military intervention remained unlikely, but not impossible; and that the Northerners did not represent a cohesive group. Uwais predicted that the National Assembly would pass legislation embracing some electoral reforms in a "watered-down" version, and could move forward the electoral calendar by three to six months to November 2010 or February 2011. The Independent National Electoral Commission (INEC) may use the late revisions as an excuse for overseeing poorly-managed elections. He underscored that, for certain duties, an official letter to transfer power to Vice President Jonathan would be required. END SUMMARY.

PRESIDENT'S HEALTH NOT A CONSTITUTIONAL CRISIS

¶2. (C) Uwais told the Ambassador that he did not have any inside information on the current state of President Yar'Adua's health, beyond what he has read in the local media. Uwais said "politicians would like to make a situation out of the President's health, but the Constitution is clear about succession -- current Vice President Goodluck Jonathan becomes president upon the resignation or death of Yar'Adua." Uwais added his concern that "problems would come from the North," given the tradition of zonal rotation. Northerners "feel entitled to two terms." Uwais continued, "it will not be easy for Jonathan to step down in 2011 after being President for a year and a half." Uwais hedged, "one can't ever rule out a coup. No one is sure the military has made up its mind to stay out of politics," but, from all indications, no sign exists that the military plans to step in.

¶3. (C) Regarding Section 145 of the Nigerian Constitution authorizing the Vice President to become "Acting President" following written declaration from the President, Uwais remarked that, "in reality, the Vice President has been acting on behalf of Yar'Adua because of his health condition. Informally, the VP is doing lots of things, and can carry

out functions, or act on (Yar'Adua's) behalf without being called 'Acting President.'" Uwais noted that, without the letter, however, Jonathan cannot give the oath of office, for example, to new Chief Justice Aloysius Iyorgyer Katsina-Alu, given provisions of the Oath Act.

ERC CHAIR EXPECTS NATIONAL ASSEMBLY PASSAGE EARLY NEXT YEAR

¶4. (C) Justice Uwais said he expected the National Assembly to pass a "watered-down" version of the ERC's recommendations. Uwais said the most notable exclusion involves the method of selecting the Chairperson of the Independent National Electoral Commission (INEC). Uwais commented, "until the President no longer appoints a political partisan chair, the National Electoral Commission will never be independent." He continued, "It will only be beholden to the party which put that person in the chair." Uwais did not expect that the incumbent would seek -- or receive -- an additional term when his five-year incumbency ends June 2010, because "he is so controversial."

ELECTORAL CALENDAR TO ACCELERATE

¶5. (C) Uwais restated the ERC's suggestion to hold elections six months ahead of the May 2011 swearing-in ceremony of a newly-elected President. This period would allow resolution of all legal challenges before a new president or other elected officials assume office. Uwais noted that this

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recommendation differed from that of the National Assembly, which prefers a three-month period to complete litigation. But Uwais argued that a period of three months "is not sufficient." In 2007, he noted, the courts faced 1,000 petitions; such a short time period, he said, would be "chaotic." Uwais said the National Assembly would likely pass electoral reform legislation in the first quarter of 2010, resulting in the electoral calendar advancing to as early as November 2010 or February 2011, if a proposal by Senators is accepted. Regarding the period between elections and swearing-in ceremonies, Uwais believes "there is only one person in authority; so, the incumbent President would not be a lame duck. A winning candidate would be busy forming his government."

COMMENT

¶6. (C) Justice Uwais served as a member of the Supreme Court since 1975 and as Chief Justice for a decade under Obasanjo's military and civilian administrations. He headed the 22-person ERC that submitted a report with electoral reform recommendations in December 2008. Such recommendations, however, have languished under President Yar'Adua and the National Assembly during the past year. Uwais lamented Yar'Adua's failure to "gazette" the Commission report, or publish it for public sale, calling the administration's lack of action "an oversight" that he was not prepared to call "deliberate." Nevertheless, he remained confident that the National Assembly would implement some ERC recommendations early next year, and in time to hold elections under revised electoral legislation and a revised electoral calendar. In any case, we anticipate that INEC officials may attempt to use late approval of such revisions as an excuse for overseeing poorly-managed elections nominally scheduled for April 2011, but likely to occur as early as November 2010 or February 2011.

SANDERS